

1 Stephen D. Finestone (Cal. Bar No. 125675)  
Jennifer C. Hayes (Cal. Bar No. 197252)  
2 Ryan A. Witthans (Cal. Bar No. 301432)  
FINESTONE HAYES LLP  
3 456 Montgomery Street, Floor 20  
San Francisco, CA 94104  
4 Tel.: (415) 481-5481  
Fax: (415) 398-2820  
5 Email: sfinestone@fhllawllp.com  
Email: jhayes@fhllawllp.com  
6 Email: rwitthans@fhllawllp.com

7 Attorneys for A. Kyle Everett,  
Chapter 7 Trustee  
8

9 **UNITED STATES BANKRUPTCY COURT**  
10 **NORTHERN DISTRICT OF CALIFORNIA**  
11 **SAN FRANCISCO DIVISION**

12 In re BENJA INCORPORATED, *aka* EPHE  
13 CORPORATION,

14 Debtor.

Case No. 20-30819-DM  
Chapter 7  
Hon. Dennis Montali

15 **CHAPTER 7 TRUSTEE'S MOTION TO**  
16 **APPROVE COMPROMISE OF**  
17 **CONTROVERSY WITH DANIEL IAN**  
18 **WEINER**

19 Hearing:

20 *No hearing requested. Noticed pursuant to*  
21 *B.L.R. 9014-1(b)(3).<sup>1</sup>*

*Please visit [www.canb.uscourts.gov](http://www.canb.uscourts.gov) for*  
*information regarding the Court's operations*  
*due to the COVID-19 pandemic.*

22 A. Kyle Everett (the "Trustee"), the duly appointed Chapter 7 trustee of the bankruptcy  
23 estate of the above-captioned debtor ("Benja"), hereby submits this motion (the "Motion")  
24 pursuant to § 105(a), Bankruptcy Rule 9019(a), and B.L.R. 9014-1(b)(3) for entry of an order  
25

26  
27 <sup>1</sup> Unless specified otherwise, all chapter and code references are to the Bankruptcy Code,  
28 11 U.S.C. §§ 101–1532. "Bankruptcy Rule" references are to the Federal Rules of Bankruptcy  
Procedure and "B.L.R." references are to the Bankruptcy Local Rules for the Northern District of  
California.

1 approving the settlement agreement (the “Settlement Agreement”) reached between the Trustee  
2 and Daniel Ian Weiner (“Mr. Weiner”). This Motion is supported by the concurrently filed  
3 declaration of A. Kyle Everett (“Everett Decl.”) and notice of opportunity for hearing.

#### 4 **I. BACKGROUND**

##### 5 **A. Procedural Background**

6 Benja is a Delaware corporation that filed a voluntary petition for Chapter 11 bankruptcy  
7 relief on October 15, 2020. BK 1.<sup>2</sup> The Trustee was appointed as the Chapter 11 trustee on  
8 November 3, 2020. BK 45. The case was converted to Chapter 7 on January 29, 2020, and the  
9 Trustee was appointed as the Chapter 7 trustee. BK 85, 86.

10 The Trustee filed an adversary proceeding complaint (the “Complaint”) against Mr.  
11 Weiner on October 14, 2022. AP 1. Mr. Weiner filed his answer on December 19, 2022. AP 6.

##### 12 **B. Factual Background**

13 Benja was ostensibly an e-commerce and digital advertising company. Everett Decl. at  
14 ¶ 3. Andrew Chapin (“Mr. Chapin”) served as Benja’s chief executive officer from its founding  
15 until at least September 2020. *Id.*

16 Mr. Chapin entered into a criminal plea agreement in which he admitted to bank fraud,  
17 wire fraud, and securities fraud. *Id.* at ¶ 4.<sup>3</sup> The charges generally arose from, among other  
18 things, false statements and omissions about Benja’s revenue, accounts receivable, and  
19 commercial dealings that were made to Benja’s creditors, investors, and prospective investors to  
20 induce payments and/or investments. *Id.*

21 Mr. Weiner performed work for, and for the benefit of, Benja and Mr. Chapin beginning  
22 on or about January 15, 2018. *Id.* at ¶ 5. The Trustee’s Complaint alleges, among other things,  
23 that (1) on multiple occasions between about April through July 2020, Mr. Weiner assisted Mr.  
24 Chapin’s fraudulent scheme by impersonating representatives of companies with which Benja  
25 falsely claimed to have business relationships; (2) during this time, Mr. Weiner made materially

---

27 <sup>2</sup> “BK” references are to the docket in the main bankruptcy case and “AP” references are  
28 to the docket in Adv. Proc. No. 22-3018, *Kyle Everett v. Daniel Ian Weiner*.

<sup>3</sup> *Plea Agreement*, N.D. Cal. No. CR 21-00217-MMC, ECF 42.

1 false and fraudulent representations to creditors, investors, and prospective investors; (3)  
2 investors paid over \$10 million to Benja following the date of Mr. Weiner's first impersonation,  
3 and at least some of these payments were induced in part by Mr. Weiner's fraud; and (4) Mr.  
4 Weiner received compensation specifically for these impersonation actions, as well as in the  
5 course of his employment generally. *Id.* Mr. Weiner disputes these allegations. *Id.*

6 The Complaint states claims for avoidance of fraudulent transfers, aiding and abetting  
7 fraud, violation of California Business and Professions Code §§ 17200 *et seq.*, and disallowance  
8 of claim, among other claims for relief. AP 1. Without admitting or determining any fault or  
9 liability whatsoever, the parties entered into the Settlement Agreement to settle all claims for  
10 relief between them. Everett Decl. at ¶ 6.

## 11 II. SETTLEMENT AGREEMENT TERMS

12 As set forth more fully in the Settlement Agreement,<sup>4</sup> the key terms of the settlement  
13 reached between the Trustee and Mr. Weiner, which is conditioned upon this Court's approval,  
14 are as follows:

- 15 1. **Payment.** Mr. Weiner's payment of \$13,200 to the bankruptcy estate of Benja.
- 16 2. **Effectiveness.** The effectiveness of the Settlement Agreement is subject to, and  
17 conditioned upon, the final approval of the Court. The Trustee shall move for such  
18 approval once payment is received from Mr. Weiner. If the Court does not approve  
19 the Settlement Agreement, the Trustee shall keep \$2,500 of Mr. Weiner's payment as  
20 nonrefundable. Once the Settlement Agreement is finally approved by the Court, the  
21 Trustee will voluntarily dismiss the adversary proceeding against Mr. Weiner.
- 22 3. **Mutual release.** The parties mutually release their claims against one another,  
23 including a waiver pursuant to Cal. Civ. Code § 1542. For the avoidance of doubt,  
24 nothing in the Settlement Agreement releases or impairs the Trustee's duties as set  
25

---

26  
27 <sup>4</sup> A true and correct copy of the Settlement Agreement is attached as Attachment 1 to the  
28 concurrently filed declaration of A. Kyle Everett. To the extent that there is any conflict between  
the terms of the Settlement Agreement and the description of those terms set forth in this Motion,  
the former shall control.

1           forth in section 4.N.9 of the Handbook for Chapter 7 Trustees published by the U.S.  
2           Department of Justice (version dated March 24, 2023). Furthermore, nothing in the  
3           Settlement Agreement impairs or prevents the Trustee from communicating with  
4           governmental agencies, regulatory authorities, and/or third parties about this  
5           adversary proceeding and the Trustee's allegations therein, whether or not the  
6           Trustee's claims are released.

- 7           **4. Waiver of Mr. Weiner's claim in bankruptcy case.** Mr. Weiner waives his right to  
8           file a proof of claim or otherwise assert any right to payment in Benja's bankruptcy  
9           case.

10          The Trustee has received Mr. Weiner's payment pursuant to the terms set forth in the Settlement  
11          Agreement. Everett Decl. at ¶ 7.

### 12          **III.   LEGAL ARGUMENT**

13               By way of this Motion, the Trustee seeks approval of the compromise pursuant to  
14          § 105(a) and Bankruptcy Rule 9019(a), which provides, "On motion by the trustee and after  
15          notice and a hearing, the court may approve a compromise or settlement."

16               "The purpose of a compromise agreement is to allow the trustee and the creditors to  
17          avoid the expenses and burdens associated with litigating sharply contested and dubious claims."  
18          *Martin v. Kane (In re A & C Properties)*, 784 F.2d 1377, 1380–81 (9th Cir. 1986); *cert. den. sub*  
19          *nom Martin v. Robinson*, 479 U.S. 854 (1986). Bankruptcy courts have great latitude in  
20          approving compromise agreements. *Woodson v. Fireman's Fund Insurance Co. (In re Woodson)*,  
21          839 F.2d 610, 620 (9th Cir. 1988). However, a court's discretion is not unlimited. A compromise  
22          may be approved only if it is "fair and equitable." *A & C Properties* at 1381. In approving a  
23          proposed compromise in bankruptcy proceedings, a court must consider:

24                       (a) The probability of success in the litigation; (b) the difficulties, if  
25                       any, to be encountered in the matter of collection; (c) the complexity  
26                       of the litigation involved, and the expense, inconvenience and delay  
                             necessarily attending it; (d) the paramount interest of the creditors  
                             and a proper deference to their reasonable views in the premises.

27          *Id.* at 1381 (citations omitted).

1 “It is not necessary to satisfy each of these factors provided that the factors as a whole  
2 favor approving the settlement.” *In re Pacific Gas & Elec. Co.*, 304 B.R. 395, 417 (Bankr. N.D.  
3 Cal. 2004). A court’s role in considering a proposed compromise is “to canvas the issues and see  
4 whether the settlement falls below the lowest point in the range of reasonableness.” *Id.* at 417  
5 (citing *In re Drexel Burnham Lambert Group, Inc.*, 134 B.R. 493, 496-97 (Bankr. S.D.N.Y.  
6 1991)). Although the Trustee bears the burden of persuasion, “a court generally gives deference  
7 to a trustee’s business judgment in deciding whether to settle a matter.” *Goodwin v. Mickey*  
8 *Thompson Entm’t. Group, Inc. (In re Mickey Thompson Entm’t Group, Inc.)*, 292 B.R. 415, 420  
9 (9th Cir. BAP 2003).

10 For the reasons stated below, the Trustee believes in his reasonable business judgment  
11 that the Settlement Agreement is fair and equitable and that it fulfills the *A & C Properties*  
12 factors. Everett Decl. at ¶ 8.

13 A. Probability of Success

14 The Trustee’s probability of establishing liability against Mr. Weiner is high, and thus  
15 this factor does not favor approval of the Settlement Agreement. *Id.* at ¶ 9. However, this factor  
16 is offset by the other factors discussed below. *Id.* It is useful to break down the anticipated  
17 liability into three portions:

- 18 1. **Payments made to Mr. Weiner specifically for his impersonation of purported**  
19 **customers of Benja.** The Trustee is confident that he would succeed in obtaining a  
20 judgment for avoidance of these payments. *Id.* The evidence strongly supports the  
21 avoidance of the transfers as actual fraud under a Ponzi scheme orchestrated by Mr.  
22 Chapin, who pled guilty to crimes related to his fraud in operating Benja and  
23 deceiving investors and lenders with fabricated accounts receivable and financial  
24 statements. *Id.* Case law provides a presumption of actual fraud when, as here, there  
25 is a criminal plea establishing the elements of a Ponzi scheme and the transfers were  
26 made in furtherance of such scheme. *Santa Barbara Capital Mgmt. v. Neilson (In re*  
27 *Slatkin)*, 525 F.3d 805, 814 (9th Cir. 2008). *See Kasolas v. Nicholson (In re Fox*  
28 *Ortega Enters.)*, 631 B.R. 425 (Bankr. N.D. Cal. 2021). Despite this presumption, the

1 Trustee still bears the burden of establishing that the transfers were part of a Ponzi  
2 scheme. *Fox Ortega*, 631 B.R. at 449–50, 456. The Trustee also believes that these  
3 payments would be avoided as constructive transfers because the Debtor received less  
4 than a reasonably equivalent value in exchange for the payments and the Debtor (1)  
5 was insolvent when the payments were made; (2) was engaged in business with  
6 unreasonably small capital; (3) intended to incur, or believed that it would incur,  
7 debts beyond its ability to pay; and/or (4) made the payments to an insider under an  
8 employment contract and not in the ordinary course of business. Everett Decl. at ¶ 9.  
9 *See* § 548(a)(1)(B); Cal. Civ. Code § 3439.04(a)(2).

10 2. **Mr. Weiner's entire salary.** Mr. Weiner performed work beginning on or about  
11 January 15, 2018. Everett Decl. at ¶ 9. In contrast to the avoidance claims discussed  
12 above, as to which the Trustee believes he would readily establish liability under one  
13 or more theories, Mr. Weiner may have viable arguments against the avoidance of his  
14 entire salary. *Id.* These may include arguments that (1) Mr. Weiner's work prior to his  
15 impersonation of purported customers was not done in furtherance of a fraudulent  
16 scheme; and (2) Benja received reasonably equivalent value in exchange for the  
17 salary paid to Mr. Weiner. *Id.* While the Trustee would dispute these arguments, they  
18 demonstrate a risk that a court might not find Mr. Weiner liable for avoidance of his  
19 entire salary. *Id.*

20 3. **Damages for aiding and abetting fraud.** The Trustee is confident that a court would  
21 be persuaded by the evidence that (1) Mr. Weiner assisted Mr. Chapin's fraudulent  
22 scheme by impersonating representatives of purported customers of Benja; (2) Mr.  
23 Weiner made materially false and fraudulent representations to creditors, investors,  
24 and prospective investors; and (3) investors paid over \$10 million to Benja following  
25 the date of Mr. Weiner's first impersonation. *Id.* However, Mr. Weiner may present  
26 arguments in his defense such as (1) he was unaware of the full extent of the fraud  
27 being committed by Mr. Chapin; and (2) his conduct was not a substantial factor in  
28 causing harm to Benja and its creditors and investors. *Id.* While the Trustee would

1 dispute these arguments, there is a risk that a court might not find Mr. Weiner liable  
2 for fraud damages (or may only find him liable for a small portion of the total  
3 damages sought). *Id.*

4 B. Difficulty of Collection

5 The difficulty of collection element weighs heavily in favor of approving the Settlement  
6 Agreement. *Id.* at ¶ 10. Mr. Weiner has provided, and the Trustee has obtained, financial  
7 statements and other information evidencing Mr. Weiner's assets, income, and general financial  
8 situation. *Id.* Mr. Weiner is a Rhode Island resident. *Id.* While Mr. Weiner owns his home, his  
9 equity is limited and would likely be entirely protected by Rhode Island's homestead exemption  
10 laws. *Id.* Furthermore, it is unlikely that garnishment of his wages would result in a meaningful  
11 recovery to the bankruptcy estate. *Id.* For these reasons, the Trustee anticipates significant  
12 difficulties in collecting from Mr. Weiner, who appears to be effectively judgment proof. *Id.*

13 C. Complexity of Litigation, Expense, Inconvenience, and Delay

14 This factor weighs strongly in favor of approval of the Settlement Agreement. *Id.* at ¶ 11.  
15 While the payments made to Mr. Weiner for his impersonation of purported customers could  
16 likely be avoided on a motion for summary judgment, these transfers represent a fairly small  
17 amount (as low as approximately \$8,500), which amount would be significantly offset by the  
18 cost of bringing such a motion. *Id.* The Trustee's remaining claims are based upon facts that are  
19 disputed by Mr. Weiner. *Id.* Litigation of these claims would require the bankruptcy estate to  
20 incur substantial fees and costs to conduct discovery and put on a trial. *Id.* Moreover, the  
21 Trustee's claim for aiding and abetting fraud is likely to require expert witness testimony to  
22 establish damages, further increasing the fees and costs to the bankruptcy estate. *Id.* For the  
23 reasons set forth above, even if the Trustee were to receive a large judgment against Mr. Weiner,  
24 it is highly unlikely that the estate could recover on that judgment in an amount sufficient to  
25 offset the significant cost, inconvenience, and delay of litigation. *Id.*

26 D. Paramount Interest of Creditors

27 This factor weighs heavily in favor of approval of the Settlement Agreement. *Id.* at ¶ 12.  
28 Mr. Weiner's payment pursuant to the Settlement Agreement represents a significant recovery on

1 the Trustee's claims without incurring the substantial anticipated costs to the bankruptcy estate if  
2 these claims were to be litigated, the risk that the Trustee would not prevail on his claims, and  
3 the high risk that a judgment would be uncollectible. *Id.*

4 **IV. CONCLUSION**

5 In summary, the Trustee submits that the Settlement Agreement is fair and equitable, is  
6 within the range of reasonableness, and, in the Trustee's reasonable business judgment, is in the  
7 best interests of the bankruptcy estate and its creditors. *Id.* at ¶ 13. For the reasons stated above,  
8 the Trustee requests entry of an order granting this Motion and approving the Settlement  
9 Agreement.

10  
11 Dated May 30, 2023

FINESTONE HAYES LLP

12  
13 /s/ Rvan A. Witthans

14 Ryan A. Witthans  
Attorneys for A. Kyle Everett,  
Chapter 7 Trustee